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 GROUSE RIVER OUTFITTERS, LTD.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

GROUSE RIVER OUTFITTERS LTD.,

Plaintiff,

v.

ORACLE CORPORATION,

Defendant.

Case No. 3:16-cv-02954-LB

**JOINT CASE MANAGEMENT  
 STATEMENT**

Time: 10:00 AM  
 Date: May 2, 2019  
 Place: Courtroom B, 15<sup>th</sup> Floor  
 Judge: The Honorable Laurel Beeler

1 In accordance with the Court's order, Dkt. 213, the parties, Grouse River Outfitters, Ltd  
 2 ("Grouse River") and Oracle Corporation ("Oracle"), provide the following statement regarding  
 3 the case status and pre-trial schedule:

4 **I. Case Update**

5 **A. Grouse River Statement.**

6 In its e-mail ECF minute order, ECF Doc. 213, the Court stated that "To make sure things  
 7 are on track, the court sets a further case-management conference for 5/2/2019 at 11:00 a.m. and  
 8 directs the filing of a short joint update on 4/25/2019."

9 At Oracle's suggestion, Grouse River prepared the first draft and proposed the following:

10 Consistent with the Court's scheduling orders, the depositions of Maciek Wronski and  
 11 Glenn Fallis were completed on April 10 and 12, and the parties exchanged expert reports  
 on April 19. The parties are proceeding on the Court's current schedule.

12 Oracle came back with a litany of matters that Grouse River respectfully believes should  
 13 be the subject of a meet and confer under the Court's standing order, and proposed modifications  
 14 to the Court's scheduling orders. For the reasons set out below (in *italics*) Grouse River concurs  
 15 in Oracle's request that the Court modify its existing pretrial schedule to accommodate the parties'  
 16 and their counsel's schedules and allow for an orderly ramp up to the July 8 trial. Grouse River  
 17 has added responses (in *italics*) to Oracle's positions below.

18 **B. Oracle Statement**

19 Below, Oracle provides updates regarding the fact and expert discovery that has taken  
 20 place since the last case management conference.

21 **1. Fact Discovery**

22 On February 27, 2019, the Court entered the parties' stipulation regarding Grouse River's  
 23 client file with its outside accountant, Grant Thornton. Dkt. 211. On April 1, 2019, Grant  
 24 Thornton completed its production of its client file regarding Grouse River. Grant Thornton,  
 25 however, only retained and could produce email communications with Grouse River that post-date  
 26 April 2016. Oracle requested production from Grant Thornton of its communications with Grouse  
 27 River because Grouse River itself failed to preserve its communications with its accountant both  
 28 before and after it filed its complaint in this litigation. Oracle's position is that Grouse River's

1 failure to preserve its communications with its accountant, as well as its failure to preserve its  
 2 communications with its banks, constitutes spoliation of evidence relevant to its financial  
 3 condition. In connection with its pretrial filings, Oracle intends to seek relief from the Court for  
 4 Grouse River's failure to preserve relevant evidence. In addition, Oracle believes that, through its  
 5 pre-trial filings, Grouse River's fraud claims can be furthered narrowed.

6 ***Grouse River response:***

7 *Grouse River disputes these claims, and will respond when and if Oracle properly raises*  
 8 *them. See the Court's standing order.*

9 **2. Fact Witness Depositions**

10 On April 10 and April 12, 2019, Oracle deposed Grouse River's former director of  
 11 purchasing, Maciek Wronski, and its former CEO, Glenn Fallis, in Vancouver, Canada. Oracle  
 12 was unable to take the deposition of Grouse River's former director of e-commerce, Ryan Wuest,  
 13 due to a serious illness. Given his illness, the parties do not expect Mr. Wuest to appear at trial.

14 ***Grouse River response:***

15 *Grouse River concurs.*

16 **3. Expert Discovery**

17 On April 19, 2019, the parties exchanged updated expert reports. Oracle will be serving  
 18 an updated rebuttal report on May 3, 2019, in accordance with the schedule previously set by the  
 19 Court. Dkt. 207.

20 In response to Grouse River's complaints below, Oracle notes that it provided Grouse River  
 21 with its expert's monthly billing invoices to date which detail its expert's hourly rate and total  
 22 hours worked. Grouse River thus has Oracle's expert's total compensation. ***Grouse River***  
 23 ***response:***

24 *Oracle did not merely serve an "updated" report. It served virtually an entirely*  
 25 *new one, seeking (but not succeeding) to overcome the deficiencies in its first one. Grouse*  
 26 *River will deal with it in due course. In addition, the "new" Sterling/Perry report did not*  
 27 *include his total compensation, but merely his "hourly rate." Grouse River has asked*  
 28 *Oracle to amend it to include his total compensation. See Silgan Containers v. Nat'l Union*

*Fire Ins., No. C 09-05971 RS LB, 2011 WL 1058861, at \*5 (N.D. Cal. Mar. 23, 2011) (Rule 26(a)(2)(B)(vi) specifically requires that the report itself include total compensation). Merely providing statements does not suffice. So far, Oracle has not done so, Grouse River is cautiously optimistic that it will.*

## **II. Pre-Trial Schedule**

In its March 31, 2019 Order, the Court revised the pre-trial deadlines (Dkt. 207) to conform to the Court's required pre-trial procedures. Dkt. 213 (revised pre-trial schedule). Both parties respectfully request that the Court make certain modifications to the revised pre-trial schedule but disagree with respect to those modifications, with the exception that the parties are in agreement in their request that the Court hold the final pre-trial conference on June 27, 2019 instead of June 20, 2019.

### **A. Grouse River's Position**

Based on a trial date of July 8, 2019, Oracle proposed a set of interim dates, to which Grouse River acceded, and the parties submitted them to the Court, ECF Doc. 204-5, which then adopted them in its February 20, 2019 "Revised Scheduling Order," ECF Doc. 207.

Grouse River's agreement to those dates was premised on the schedules of its counsel, who had (and have) certain long-planned prior commitments. The Court's revised scheduling order, ECF Doc. 213, conflicts with those commitments.

Grouse River therefore respectfully requests, consistent with (i) the Court's timetables, (ii) some of Oracle's suggested modifications and (iii) Grouse River's counsel's prior commitments, that the Court set the following dates, all tied to the pretrial schedule set forth in the Court's initial scheduling order, ECF Doc.55, based on Grouse River's agreement to the general schedule in ECF Doc. 207, and the trial date of July 8, 2019:

MAY. 10	MEET AND CONFER RE PRETRIAL FILINGS
	EXCHANGE WITNESS LISTS
MAY 15	SERVE (BUT NOT FILE) MOTIONS IN LIMINE
MAY 17	EXCHANGE DEPOSITION DESIGNATIONS
MAY 22	SERVE (BUT NOT FILE) OPPOSITIONS TO MOTIONS IN

1 LIMINE  
2 MAY 24 EXCHANGE DEPOSITION COUNTER-DESIGNATIONS  
3 MAY 24 FILE:  
4 MOTIONS IN LIMINE (OTHER THAN FOR EXPERTS)  
5 JOINT PROPOSED PRETRIAL ORDER  
6 SIGNED STIPULATIONS  
7 SEPARATE WITNESS LISTS  
8 JOINT PROPOSED VERDICT FORM  
9 JOINT VOIR DIRE, SUPPLEMENTED BY SEPARATE  
10 REQUESTS  
11 PROPOSED JURY QUESTIONNAIRE (IF DIFFERENT  
12 FROM COURT'S STANDARD ONE)  
13 JOINT JURY INSTRUCTIONS  
14 SEPARATE MEMORANDA ON DISPUTED JURY INSTRUCTIONS  
15 TRIAL BRIEFS ON ANY REMAINING ISSUES  
16 COPIES OF RULE 26(a)(3) DISCLOSURES  
17 CHAMBERS COPIES OF THESE MATERIALS  
18 WORD VERSIONS E-MAILED TO CHAMBERS  
19 MAY. 31 OPPOSITIONS, OBJECTIONS, EXHIBITS, AND DEPO  
20 DESIGNATIONS DUE  
21 LODGE JOINT SETS OF TRIAL EXHIBITS WITH DEPUTY  
22 CLERK  
23 COPIES OF DEPOSITION DESIGNATIONS FOR WITNESSES  
24 APPEARING ONLY BY DESIGNATION  
25 COPIES OF DESIGNATION OF INTERROGATORIES AND  
26 ADMISSIONS  
27 OBJECTIONS TO EXHIBITS AND USE OF DEPOSITIONS  
28 CHAMBERS COPIES

1           JUNE 25                   FILING OF DEPOSITION PACKAGES  
 2           JUNE 27                   FINAL PRETRIAL CONFERENCE  
 3           JULY 8                   TRIAL (FIVE DAYS)

4           This schedule will provide the parties with sufficient time between the May 24 and May  
 5 31 filings to intelligently do their final pretrial preparations, and allow the Court sufficient time to  
 6 consider any unresolved or disputed issues.

7           If Oracle believes, based on Mr. McEwen's report, that certain of his views are subject to  
 8 an *in limine* motion – notwithstanding the Court's rather clear prior indications that it is going to  
 9 give free range to allow both experts to testify based on their reports, see, e.g., ECF Doc. 205 at  
 10 5:2-5 – it should make its motion on May 15 consistent with the Court's standard procedures.

11           Although this schedule may “accelerate” the filing of “Oppositions, objections, exhibits  
 12 and depo designations” by a week from June 6 (set by ECF Doc. 213) to May 31, and advances  
 13 the date for *in limine* motions by a week from May 21 (set by ECF Doc. 213) to May 15, it starts  
 14 with the May 10 date the parties agreed to and that was then set by the Court when it entered its  
 15 February 20, 2019 “Revised Scheduling Order,” ECF Doc. 207, based on Grouse River's counsel's  
 16 pre-existing commitments, and then follows the progression of dates and events set out in the  
 17 Court's initial scheduling order, ECF Doc. 55, but give the parties and the Court additional time  
 18 to prepare for trial after the May 31 filings. The same schedule also set out a date of March 1, 2019  
 19 to “complete all fact discovery” – which Grouse River complied with – and for depositions – which  
 20 Grouse River complied with – and for expert disclosures and depositions – which are also on track  
 21 as scheduled.

## 22                   **B.       Oracle's Position**

23           While Oracle requests that the Court make certain modifications to the pre-trial schedule,  
 24 it cannot agree to the schedule proposed above by Grouse River, which seeks to accelerate most  
 25 of the pre-trial deadlines. Given that the parties only recently concluded fact discovery, and that  
 26 expert discovery remains ongoing, Oracle cannot agree to a schedule that pushes up the pre-trial  
 27 deadlines any further. Oracle agreed to trial on July 8 because Grouse River's counsel represented  
 28 that it was the only date in 2019 that counsel were available; yet, Grouse River's proposed schedule

1 suggests that its counsel are not available during the first three weeks of June to do the necessary  
2 pre-trial work. Oracle's trial preparation should not be dictated by Grouse River's counsel's  
3 personal schedule. If Grouse River's counsel had "long planned prior commitments" in June,  
4 Grouse River should not have demanded an early July trial.

5 As noted above, Oracle respectfully requests that the Court hold the pre-trial conference  
6 on June 27, 2019 (instead of June 20, 2019) so that all deadlines that are linked to the pre-trial  
7 conference in the Court's pre-trial order (Dkt. 55) are pushed out a week, with the exception of the  
8 due dates for motions in limine and deposition designations, which Oracle addresses separately  
9 below.

10 **Motions In Limine.** Under the Court's revised schedule, the parties are currently required  
11 to exchange their motions in limine on May 21, 2019 (30 days before the final pretrial conference,  
12 which is currently set for June 20, 2019). *See* Dkt. 55, 213. The parties, however, are set to hold  
13 expert depositions the week of May 20 (Dkt. 207) and thus those expert depositions will not be  
14 complete prior to the deadline for serving motions in limine. Oracle intends to move in limine to  
15 exclude certain of the opinions of Grouse River's damages expert, Paul McEwen, and anticipates  
16 that his deposition testimony will provide support for its motion. Oracle thus requests that the  
17 Court modify the pre-trial schedule so that the parties (i) serve their motions in limine on June 7,  
18 2019, (ii) serve their oppositions to any motions in limine on June 14, 2019, and (iii) file the  
19 motions in limine in accordance with the Court's instructions on June 17, 2019.

20 **Deposition Designations.** Under the revised schedule, the parties are required to exchange  
21 deposition designations before they will have exchanged their trial witness lists, making it difficult  
22 to know whether it is necessary to designate a given witness's testimony. Oracle requests that the  
23 Court modify the current schedule so that the parties (1) exchange witness lists for their respective  
24 case-in-chief no later than May 17, 2019, (2) exchange deposition designations for witnesses who  
25 will appear by deposition only on May 31, 2019, (3) exchange counterdesignations and objections  
26 to deposition testimony on June 14, 2019, and (4) file the deposition packets in accordance with  
27 the Court's instructions on June 25, 2019. Oracle would also like to discuss the Court's procedures  
28 for compiling the deposition packets at the upcoming conference.

1 Dated: April 25, 2019

Respectfully submitted,

2 LATHAM & WATKINS <sup>LLP</sup>

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